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August 13, 2010

227645

Ms. Cynthia T. Brown
Chief of the Section of Administration, Office of Proceedings
Surface Transportation Board
395 E Street, S.W.
Washington, D. C. 20423

RE: Finance Docket No. 35404, Toledo, Peoria & Western Railway
Corp.—Petition for Declaratory Order.

Dear Ms. Brown:

Enclosed are the original and 10 copies of the Toledo, Peoria & Western Railway Corp.'s ("TP&W") Petition for Declaratory Order. Also enclosed are a check from TP&W for the filing fee of \$1,400, and a computer diskette containing the Petition in Word and pdf format.

Please time and date stamp the additional copy of this letter and the Petition and return them with our messenger. Thank you for your assistance.

If you have any questions please call or email me.

Sincerely yours,

Melanie B. Yasbin
Attorney for Toledo, Peoria & Western Railway Corp.

Enclosures

FILED

AUG 13 2010

**SURFACE
TRANSPORTATION BOARD**

ENTERED
Office of Proceedings

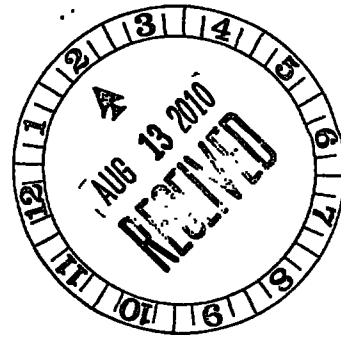
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**SURFACE
TRANSPORTATION BOARD**



BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 35404

TOLEDO, PEORIA & WESTERN RAILWAY CORP.
—PETITION FOR DECLARATORY ORDER

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Attorneys for: TOLEDO, PEORIA & WESTERN
RAILWAY CORP.

Dated: August 13, 2010

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 35404

TOLEDO, PEORIA & WESTERN RAILWAY CORP.
—PETITION FOR DECLARATORY ORDER

Toledo, Peoria & Western Railway Corp. (“TP&W”) respectfully requests the Surface Transportation Board (the “Board”) to declare that BNSF Railway Company (“BNSF”) must provide a free route to TP&W in order to interchange with BNSF, as directed by BNSF, the receiving railroad. To that end, TP&W respectfully requests the Board to institute a declaratory order proceeding pursuant to 5 U.S.C. §554(e) and 49 U.S.C. §721(a) to terminate a controversy or remove uncertainty. TP&W asks the Board to find that the charges imposed on TP&W by the Tazwell & Peoria Railroad, Inc., (“TZPR”) for switching on BNSF’s behalf does not provide the required free route and that BNSF is responsible for that charge.

BACKGROUND

TP&W and BNSF and their predecessors, have interchanged traffic in the Peoria, IL area for decades. TP&W delivers cars in interchange to BNSF, the receiving railroad, pursuant to the directions of the BNSF. BNSF requires TP&W to move cars to be interchanged to BNSF from TP&W’s yard in Peoria, IL, westward to the yard of the TZPR. Once the cars are delivered from TP&W to TZPR, TZPR switches the cars for further delivery to BNSF by TP&W.

Once the cars are switched by TZPR, TP&W picks the cars up from the TZPR's Peoria yard and delivers them to BNSF in Galesburg, IL. The TP&W operation from TZPR's Peoria yard west to Galesburg is performed by TP&W as BNSF's agent under haulage rights granted by BNSF and imposed by the Interstate Commerce Commission in *Burlington Northern et al.-Merger-Santa Fe Pacific et al.*, 10 I.C.C.2d 661, 675, and 813 (1995). TZPR bills TP&W for an intermediate switch charge on the BNSF cars pursuant to Freight Tariff TZPR 8041-E Item 400 (see Exhibit A).

Through its existing trackage rights over the TZPR,¹ and its haulage arrangement with BNSF, TP&W can move cars for BNSF from TP&W's yard to the point of interchange in Galesburg.²

TP&W has sought to resolve this issue with BNSF through negotiations (see Exhibit B) and through the Board's Rail Consumer Assistance Office's informal processes. Because the parties could not resolve their issues through private negotiations and because BNSF did not respond to inquiries from the Rail Consumer Assistance Office, TP&W is filing this request for

¹ *Toledo, Peoria & Western Railroad Co.-Trackage Rights-Peoria & Pekin Union Railway Co.*, ICC Finance Docket No. 26476 (ICC served June 25, 1971). P&PU leased its rail lines to TZPR in 2004. See *Tazewell & Peoria Railroad, Inc. - Lease and Operation Exemption - Peoria and Pekin Union Railway Company*, STB Finance Docket No. 34544 (STB served Sept. 28, 2004).

² In the BN and Atchison, Topeka and Santa Fe Railway Company ("Santa Fe") merger, TP&W and BN/Santa Fe entered into a pro-competitive settlement where TP&W was granted trackage rights authority over BN's line between Galesburg and Peoria, IL, for the purpose of connecting with BN and Santa Fe at Galesburg (the "trackage rights line"). Along with the trackage rights, TP&W was granted the right to interchange between the trackage rights line and BN/Santa Fe at Galesburg and Peoria and to provide haulage to the BNSF between Galesburg and Peoria. TP&W was also granted the right to directly interchange with the BN between the trackage rights line, and the P&PU/TZPR Line.

declaratory order.

ARGUMENT

Under 5 U.S.C. §554(e) and 49 U.S.C. §721(a), the Board may issue a declaratory order to terminate a controversy or remove uncertainty. The Board has broad discretion in determining whether to issue a declaratory order. In this instance, the Board should exercise its authority and undertake this proceeding in order to clarify that BNSF, as the receiving carrier must provide a free route for interchange and delivery of cars by the TP&W to BNSF in Galesburg, IL.

Rail carriers subject to the Board's jurisdiction, are required to "establish through routes (including physical connections) with each other..." 49 U.S.C. §10703. In establishing these routes, a rail carrier must provide "reasonable, proper, and equal facilities... for the interchange of traffic between, and for the receiving, forwarding, and delivery of ...property to and from, its respective line and a connecting line of another rail carrier..." 49 U.S.C. §10742. This includes providing a free route over BNSF's tracks to the interchange point.

Through its existing trackage rights over the TZPR, and its haulage arrangement with BNSF, TP&W has a physical connection that it can use to move cars for BNSF from TP&W's yard to the point of interchange in Galesburg without TZPR's intermediate switch. Despite the capability for interchange via this connection, BNSF insists that cars be delivered from TP&W to TZPR for switching, at TP&W's expense, and then delivered by TP&W to BNSF in Galesburg.

BNSF, as the receiving railroad, has the right to designate the physical interchange, but it is also required to provide a free route over its tracks. *See Burlington N. R.R. v. United States*,

731 F.2d 33, 38 (D.C. Cir. 1984); and *Norfolk Southern Railway Company – Petition for Declaratory Order – Interchange with Reading Blue Mountain & Northern Railroad Company*, STB Docket No. 42078 (STB served April 29, 2003) at 4. TP&W is entitled to a free route in order to interchange with BNSF as directed by BNSF, as the receiving railroad. However, the TZPR charge being imposed on TP&W does not provide TP&W with the required free route.

BNSF is directing the route and point of interchange between TP&W and BNSF in the Peoria area. As the receiving carrier, BNSF does have the right to determine the location of interchange. However, BNSF must also provide a free route for interchange. In the interchange in the Peoria area, BNSF is not providing a free route, but is instead requiring TP&W to pay a charge to TZPR. TP&W seeks to have the Board hold consistent with its precedent that BNSF must either provide another free route for interchange between TP&W and BNSF in the Peoria area, or BNSF must provide a route to TP&W where the TP&W is not responsible for paying the intermediate switch charge of the TZPR.

EXPEDITED ACTION REQUESTED

TP&W requests that the Board grant the petition on an expedited basis.

CONCLUSION

TP&W respectfully requests the Board issue a declaratory order finding that BNSF must provide a free route over its tracks to its designated point of interchange.

Respectfully submitted,



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(410) 296-2250

Attorneys for: TOLEDO, PEORIA & WESTERN
RAILWAY CORP.

Dated: August 13, 2010

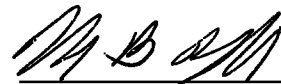
I, Paul E. Crawford, General Manager of the Toledo, Peoria & Western Railway Corp. declare under penalty of perjury that facts presented in the foregoing Petition for Declaratory Order are true and correct. Further, I certify that I am qualified and authorized to file this Petition for Declaratory Order. Executed on August 12, 2010.


Paul E. Crawford

CERTIFICATE OF SERVICE

I certify that I have this day served a copy of the Petition for Declaratory Order upon the following representative of the BNSF Railway Company by overnight delivery.

**Roger Nober
Executive Vice President Law
BNSF Railway Company
2650 Lou Menk Drive
Fort Worth, TX 76131-2830**



Melanie B. Yasbin
August 13, 2010

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EXHIBIT A

FT TZPR 8041-E
(Cancels FT TZPR 8041-D)

TAZEWELL & PEORIA RAILROAD INC.

FREIGHT TARIFF TZPR 8041-E
(Cancels Freight Tariff TZPR 8041-D)

**CHARGES, RULES AND REGULATIONS
GOVERNING
SWITCHING
FROM, TO AND WITHIN
THE
PEORIA, IL SWITCHING DISTRICT
FOR ACCOUNT
TAZEWELL & PEORIA RAILROAD INC.**

TZPR PEORIA, IL SWITCHING TARIFF

This tariff is also applicable on intrastate traffic, except where expressly provided to the contrary in connection with particular items.

ISSUED: December 10, 2008

EFFECTIVE: January 1, 2009

ISSUED BY:

**M. L. Vetter
Chief Marketing & Customer Service Officer
Illinois & Midland Railroad, Inc.
Tazewell & Peoria Railroad, Inc.
1500 N. Grand Ave.
Springfield, IL 62702**

(The provisions published herein, if effective, will not result in an effect on the quality of the human environment.)

FREIGHT TARIFF TZPR 8041-E

TABLE OF CONTENTS		RULES AND OTHER GOVERNING PROVISIONS SPECIAL RULES AND REGULATIONS - UNLIMITED	
SUBJECT	ITEM	ITEM 100	
General Rules and Regulations.....	10 to 30	ADDITIONS TO OR CHANGES IN LIST OF INDUSTRIES	
Special Rules and Regulations.....	100 to 140	When change in name of firm, individual or industry, or change of ownership occurs, switching charges as shown in this tariff apply in connection with the successor at the same location until regularly provided for.	
Terminal Switching Rates (Industries).....	200	To and from new industries not named in this tariff having private sidings which are intermediate to industries which are named, the same charge subject to the same rules as govern to the next more distant industry is on the TZPR which is named, will be made until such new firm or industry is regularly provided for.	
Intra-Terminal Switching Rates.....	300	In case new industries not named in this tariff having private sidings are established beyond the more distant industry on the TZPR which is named, the same charge, subject to the same rules as govern to the nearest industry on the TZPR which is named, will be made until such new firm or industry is regularly provided for.	
Intermediate Switching Rates.....	400		
Intra-Plant Switching Rates.....	500		
Miscellaneous Switching Rates, Rules and Charges.....	600 to 770		
RULES AND OTHER GOVERNING PROVISIONS GENERAL RULES AND REGULATIONS			
ITEM 10		ITEM 110	
REFERENCES TO TARIFFS, ITEMS, NOTES, RULES, ETC.		CHARGES - PREPAYMENT OF	
Where reference is made in this tariff to tariffs or other instruments, items, notes, rules, etc., such references are continuous and include supplements to successive issues of such tariffs or other instruments and reissues of such items, notes, rules, etc.		CL freight for delivery to a switching connection at destination, whether for public track, team track, private or other siding, when such connection performs a switching service only, will not be delivered to such connecting line until all charges assessed in accordance with published tariffs or other instrument is paid.	
ITEM 20		If cars are held for payment of charges, pending such delivery, they will be subject to car service and demurrage rules as published in tariffs or other instruments while so held.	
METHOD OF CANCELING ITEMS			
As this tariff is supplemented, numbered items with letter suffixes cancel correspondingly numbered items in the original tariff or in a prior supplement. Letter suffixes will be used in alphabetical sequence starting with A. Example: Item 445-A cancels Item 445, and Item 365-B cancels 365-A in a prior supplement, which in turn cancelled Item 365.		ITEM 120	
ITEM 30		IDLER OR TRAILER CARS	
SUPPLEMENTS AND REISSUES		Idler or trailer cars will be subject to the same charges, rules and regulations as applied to loaded cars.	
When reference is made in this tariff, or supplements, to other publications for rates or other information, it includes "Supplements thereto or successive issues thereof".		ITEM 130	
Where reference is made in this tariff to items, it includes "reissues" of such items.		INTER-TERMINAL OR INTRA-TERMINAL MOVEMENTS, PACKING REQUIREMENTS OF	
		Non-acceptance of shipments which do not comply with package requirements contained in UFC.	
		Shipments of commodities, either for inter-terminal or intra-terminal movements, will not be accepted unless said shipments comply with package requirements of the UFC.	
		ITEM 140	
		PEORIA, IL SWITCHING DISTRICT, DESCRIPTION OF	
		Wherever reference is made in this tariff or other instruments to the Peoria, IL Switching District, same includes all industries and team tracks named in Item 200, located in the following territory:	
		PEORIA SWITCHING DISTRICT including part of Peoria, Bartonville, East Peoria and Pekin:	
		on the west side of the Illinois River:	
		bounded on the north by IL Route 6, on the south by IL Route 9, on the west by the BNSF (former BN) and UP yard limits and on the east by the Illinois River.	
		on the east side of the Illinois River:	
		bounded on the north by the TFW yard limits, on the south by the CN (former IC) and IMRR yard limits, on the west by the Illinois River and on the east by IL Route 29.	

FREIGHT TARIFF TZPR 8041-E

<p align="center">TERMINAL SWITCHING RATES (INDUSTRIES)</p>	<p align="center">INTRA-TERMINAL SWITCHING RATES</p>
<p>ITEM 200 [1]</p> <p align="center">TERMINAL SWITCHING RATES</p> <p>A. APPLICATION: Terminal switching charges will be assessed to the delivering carrier for the movement of cars or locomotives originating at points outside the Peoria, IL Switching District destined to points within said district. Terminal switching charges will be assessed to the receiving carrier for the movement of cars or locomotives originating at points within the Peoria Switching District destined to points outside said district.</p> <p>B. RATES AND CHARGES: Terminal switching charges, unless otherwise specified, cover the handling of loaded cars in one direction and empty the other. If the cars are loaded in both directions, charges will be assessed for each loaded movement. For any other movement of empty cars, the charge will be the same as applied to a loaded car. Terminal switching charges for locomotives will be assessed for each movement. The terminal switching charges are as follows:</p> <ol style="list-style-type: none"> 1. Loaded cars: \$399.00 per car 2. Scale test cars \$404.00 (such charge will be assessed per occurrence and/or location against each industry requiring scale testing) 3. A rate of \$185.00 per car applies to carloads of whole grains received as a solid block of 15 or more cars from the delivering carrier destined to TZPR served industries.[C] 4. TZPR owned locomotives leased to an industry: \$230.00 per locomotive (charged in both directions) 5. A rate of \$185.00 per car applies to carloads of potash received as a solid block of 15 or more cars from the delivering carrier destined to TZPR served industries.[C] 6. A rate of \$380.00 per car applies to inbound shipments of scrap iron or steel destined to TZPR served industries. 7. Locomotives: \$507.00 per unit. 8. A rate of \$230.00 per car applies on blocks of 15 or more carloads of Grain Products (STCC 20 4) received by TZPR as a solid unit destined to one location. 	<p>ITEM 300 [1]</p> <p align="center">INTRA-TERMINAL SWITCHING RATES</p> <p>A. APPLICATION: The term intra-terminal switching is defined as the movement of a car in switching service between industries with individual or private side tracks; between such industries and team tracks or between team tracks as shown in this tariff, the movement of which is entirely within the Peoria, IL Switching District as defined in Item 140.</p> <p>B. RATES AND CHARGES: The TZPR will perform intra-terminal switching service at a rate of \$399.00 per car; \$507.00 per locomotive. Such charges will be applied to loaded cars and will cover the empty reverse route movement; and to empty cars if there is not a corresponding loaded move.</p> <p>C. RESPONSIBILITY FOR CHARGES: Except as otherwise provided, the shipper will be responsible for payment of the charges named in this item.</p>
	<p align="center">INTERMEDIATE SWITCHING RATES</p>
<p>C. LIST OF TZPR INDUSTRIES WITHIN THE PEORIA SWITCHING DISTRICT THAT APPLY TO THIS ITEM:</p> <p>AGRI - Bunge Alter Recycling Company Archer Daniels Midland Company Archer Daniels Midland/Gromark Aventine Renewable Energy Behr, Peoria Cargill Carver Lumber Caterpillar, Inc. Central Illinois Freight Handling Corp. Gavlon [A] Greenbriar [A] KBEN Transport [A] Keystone Steel and Wire Company Komatsu Mining Systems, Inc. Linde LS Lumber McFarland Cascade MGP Ingredients of Illinois Midwest Building Supply A. Miller and Company Mosale Peoria Barge terminal Peoria Brick and Tile Peoria River Terminal PMP Fermentation Praxair R. A. Cullinan & Son, Inc. Scottwood Industries Specialized Transport [A] Tazewell & Peoria Railroad Inc. Team Tracks Miscellaneous, Platforms, Storage Yards Terra Nitrogen Tomea Grain Company UAP Fertilizer</p>	<p>ITEM 400 [1]</p> <p align="center">INTERMEDIATE SWITCHING RATES</p> <p>Between connections within or passing through the Peoria Switching District, a rate of \$106.00 per car (loads and/or empties); \$199.00 per Locomotive or non-occupied Passenger car applies. Such charge will be assessed against the delivering carrier.</p>
	<p align="center">INTRA-PLANT SWITCHING RATES</p>
<p>(Industries formerly shown herein and not brought forward are hereby eliminated.)</p>	<p>ITEM 500 [1]</p> <p align="center">INTRA-PLANT SWITCHING RATES</p> <p>A charge of \$230.00 per car will be assessed for each movement of cars which have been placed for loading or unloading and subsequently switched at the request of the shipper, consignee or railroad from one location to another location on the same track within an industry or from one track within an industry to another track within the same industry. A charge of \$460.00 per locomotive will be assessed for each movement of locomotives (company owned or leased) switched at the request of the company from one location to another location on the same track within an industry or from one track within an industry to another track within the same industry. Such charges will be assessed against the party requesting the switch.</p>

FREIGHT TARIFF TZPR 8041-E

MISCELLANEOUS SWITCHING RATES, RULES AND CHARGES	MISCELLANEOUS SWITCHING RATES, RULES AND CHARGES
<p>ITEM 600 [I] CHARGE FOR CARS REQUIRING CLEARANCE MEASUREMENTS AND DIMENSIONAL INSPECTION</p> <p>In addition to the rates which apply in this tariff, a charge of \$65.00 per car will be assessed on dimensional and non-dimensional shipments requiring clearance inspection and measurements. The charge applies to cars originating at points within the Peoria Switching District for movement outside of the district and will be assessed to the outbound carrier. Cars subject to this charge will be positioned in the train based on instructions provided by the outbound carrier.</p>	<p>ITEM 650 [I] FINAL TERMINAL HAULAGE FEE</p> <p>A landing fee will be assessed against the carrier requesting the haulage services of the TZPR for the yarding of inbound road trains. Such charge will be \$650.00 per occurrence and will be in addition to all other applicable charges.</p>
<p>ITEM 610 [I] CHARGE FOR SPECIAL HANDLING OF CARS</p> <p>In addition to rates which apply in this tariff, a charge of \$1,573.00 will be applied to cars requiring special handling.</p>	<p>ITEM 660 [I] CHARGE FOR CARS HELD FOR INSTRUCTIONS</p> <p>In the absence of specific provisions to the contrary, the following will apply:</p> <p>A. Except as provided in paragraphs B, C, and D below, when on shipper's order, loaded cars are removed from industry or team tracks and held by carrier awaiting instructions, the intra-terminal or inter-terminal switching charge, as the case may be, will be assessed for the movement; such charge will be in addition to all other charges applicable in accordance with tariffs or other instruments, and will not be absorbed.</p> <p>B. A switching charge of \$230.00 per car for the account of the TZPR will be assessed on each car ordered from industry or team track and held awaiting final disposition. Such charge will be assessed against the industry ordering the car out, will be in addition to all other applicable charges and will not be absorbed.</p> <p>C. A switching charge of \$230.00 per car for the account of the TZPR will be assessed on each car received in interchange and held by TZPR awaiting final disposition. Such charge will be against the inbound carrier and will be in addition to all other applicable charges.</p> <p>D. Cars ordered off the hold track for furtherance to outbound carrier or industry will be subject to applicable switching or industry charge as defined in Item 200.</p>
<p>ITEM 615 [I] CHARGE FOR SPECIAL SWITCHING OF SHIPPER OWNED OR LEASED EMPTY CARS</p> <p>A rate of \$230.00 per car will be assessed the Industry for the movement of Industry owned or leased empty cars, between Industry, (or Industry Leased Tracks), and either Receiving or Delivery Carrier when such cars are handled without preceding loaded movement.</p>	<p>ITEM 680 [I] CARS LOADED IN VIOLATION OF CAR DISTRIBUTION ORDERS</p> <p>A charge of \$763.00 per car will be assessed against the industry and/or carrier who violates the car distribution orders on file with UMLER placed on TZPR owned or leased cars. This charge will be assessed for each occurrence and will be in addition to all other applicable charges.</p>
<p>ITEM 620 [I] CHARGES FOR CARS SWITCHED TO LEASE TRACK</p> <p>A. A rate of \$230.00 per car will be assessed the industry for the movement of loaded cars from industries located on the TZPR to tracks leased by the industry located on the TZPR. Such charge will be in addition to all other applicable charges and will not be absorbed.</p> <p>B. A rate of \$230.00 per car will be assessed the industry for loaded cars or empty cars for dismantling, received by TZPR destined industry leased tracks located on the TZPR. Such charge will be in addition to all other applicable charges and will not be absorbed.</p>	
<p>ITEM 630 [I] CHARGE FOR TURNING CARS</p> <p>For the service of turning cars/locomotives, a charge of \$230.00 per car and \$340.00 per locomotive applies.</p>	
<p>ITEM 640 [I] CHARGES FOR CARS SWITCHED FOR WEIGHING</p> <p>For the service of cars switched for weighing on industry scales (applicable only on cars switched between tracks at industry where private scales are located), a charge of \$123.00 per car will be assessed to the industry.</p>	

FREIGHT TARIFF TZPR 8041-E

MISCELLANEOUS SWITCHING RATES, RULES AND CHARGES	MISCELLANEOUS SWITCHING RATES, RULES AND CHARGES						
<p>ITEM 690 [1] SWITCHING CARS BETWEEN INDUSTRY AND TZPR REPAIR FACILITY</p> <p>A. When industry owned or leased cars are switched by TZPR between industry and TZPR repair facility for the purpose of repairs, a charge of \$230.00 per car will be assessed against the industry.</p> <p>B. When industry owned or leased locomotives are switched by TZPR between industry and TZPR repair facility for the purpose of repairs, a charge of \$230.00 per locomotive will be assessed against the industry in each direction.</p>	<p>ITEM 720 CARS INTERCEPTED AT HOLD OR BREAK-UP YARD AND RETURNED TO INDUSTRIES</p> <p>On cars (loaded or empty) released and pulled from an industry within the Peoria, IL Switching District, intercepted at hold or break-up yard within such limits and ordered returned to the industry, the switching rate subject to Item 200 will be assessed, per car, against the industry and will be in addition to all other applicable charges.</p>						
<p>ITEM 700 [1] CARS LOADED IN EXCESS OF MAXIMUM LOAD LIMIT</p> <p>The following charges will be assessed for all cars loaded in excess of maximum load limit and will be in addition to all other applicable charges:</p> <table> <tr> <td><i>If load limit exceeds marked capacity of car by:</i></td><td><i>The charge will be:</i></td></tr> <tr> <td>1,000 - 10,000 lbs.</td><td>\$152.00 per car</td></tr> <tr> <td>10,001 lbs. and over</td><td>\$763.00 per car</td></tr> </table>	<i>If load limit exceeds marked capacity of car by:</i>	<i>The charge will be:</i>	1,000 - 10,000 lbs.	\$152.00 per car	10,001 lbs. and over	\$763.00 per car	<p>ITEM 730 [1] CARS RE-BILLED AND/OR RECONSIGNED</p> <p>When the billing is changed on cars (loaded or empty) to a different consignee, destination and/or outbound carrier, a charge of \$230.00 per car will be assessed against the party changing the billing (diverting the car) and will be in addition to all other applicable charges.</p>
<i>If load limit exceeds marked capacity of car by:</i>	<i>The charge will be:</i>						
1,000 - 10,000 lbs.	\$152.00 per car						
10,001 lbs. and over	\$763.00 per car						
<p>ITEM 710 RE-USED AND UNCLAIMED CARS, FOR ACCOUNT TZPR</p> <p>1. Applies to terminal car movements: Loaded cars refused or rejected by consignee will be taken from industry or team track to hold yard awaiting final disposition. Unless otherwise negotiated, a charge for the movement from the industry to the hold yard (rate subject to Item 660) in addition to a charge from hold yard to the outbound carrier (rate subject to Item 200) will be assessed against the outbound carrier.</p> <p>2. Applies to intra-terminal car movements: Loaded cars refused or rejected by consignee will be taken from industry or team track to hold yard awaiting final disposition. Unless otherwise negotiated, a charge for the movement from the industry to the hold yard (rate subject to Item 660) will be assessed against the shipper, a charge for the movement from the hold yard to the industry (rate subject to Item 300) will be assessed against the shipper if the car is rebilled and/or reconsigned to a TZPR served industry; and a charge for the movement from the hold yard to the outbound carrier (rate subject to Item 200) will be assessed against the outbound carrier if the car is rebilled and/or reconsigned to any carrier directly connecting with the TZPR at Peoria.</p> <p>If disposition is not received within five (5) days from date of refusal or rejection, cars will be returned to connecting line or shipper, from which received, and charges from hold yard will be applied in addition to demurrage, track storage charges and other charges accruing while cars are being held.</p>	<p>ITEM 740 [1] SETBACK CARS AND CARS DELIVERED IN ERROR</p> <p>A charge of \$103.00 per car (loads and/or empties) will be assessed against the carrier which delivers cars to the TZPR in error for return of the car; and/or cars to be setback.</p>						
	<p>ITEM 760 [1] EMPTY CARS ORDERED AND REFUSED OR REJECTED BY INDUSTRY</p> <p>When cars ordered by industries for loading are refused, account of not being in proper condition to load, a charge of \$399.00 per car will be made against the railroad furnishing the car.</p> <p>When cars ordered by industries for loading are refused, if in proper condition to load, a charge of \$399.00 per car will be made against the party ordering the equipment.</p>						
	<p>ITEM 770 [1] CHARGES ON CARS HELD FOR TRANSFER OR ADJUSTMENT</p> <p>When a car, empty or loaded, is received from a connecting carrier and is subsequently held and/or switched for transfer or adjustment of lading, a switching charge of \$230.00 per car will be assessed against the delivering carrier.</p> <p>When a car, empty or loaded, is pulled from a TZPR served industry and is subsequently held and/or switched for transfer or adjustment of lading, a switching charge of \$230.00 per car will be assessed against the industry.</p>						
	<p>ITEM 780 [1] CHARGE FOR REPOSITIONING, REBLOCKING, AND/OR REDUCING CARS</p> <p>When it becomes necessary for TZPR to reposition, reblock or reduce cars for connecting carriers, due to connecting carriers inability to pull cars (excluding acts of God), a charge of \$37.00 per car/per occurrence will apply.</p>						

FREIGHT TARIFF TZPR 8041-E

	EXPLANATION OF ABBREVIATIONS AND REFERENCE MARKS (1)
	<p> ABBR Abbreviations CL Carloads LB or lb Pound(s) STCC Standard Transportation Commodity Code TZPR Tazewell & Peoria Railroad Inc. UFC Uniform Freight Classification (Uniform Classification Committee, Agent) </p> <p> [A] Addition [C] Denotes change in wording [D] Cancelled [I] Increase [R] Reduction [NC] Brought forward without change </p> <p>(Underscored portion denotes addition/ change.)</p> <p>(1) The two character state abbreviations used in this tariff are those adopted for general use by the postal departments of the United States, Canada and Mexico.</p>

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EXHIBIT B

Beach, Kim (GPRK)

From: Beach, Kim (GPRK)
Sent: Wednesday, July 14, 2010 2:12 PM
To: Beach, Kim (GPRK)
Subject: FW: TPW Interchange with BNSF

Dave:

As we have already told you, we desire to keep the current manner for handling traffic in place. We object to the changes outlined in your e-mail. Our lawyers will contact your lawyers early next week to further discuss.

Let me know if you have any questions.

Mark Schmidt

From: Rohal, David (GPRK) [mailto:David.Rohal@RailAmerica.com]
Sent: Thursday, July 08, 2010 4:50 PM
To: Schmidt, R Mark (Shortline)
Cc: Putterman, Josh (GPRK); Crawford, Paul (TPW)
Subject: TPW Interchange with BNSF

Mark –

The purpose of this letter is to bring you up to date on the interchange between BNSF and TPW.

For eastbound traffic to be interchanged from BNSF to TPW at TPW's yard in Peoria, TPW will transport traffic in haulage from Galesburg directly into TPW's yard in Peoria. TPW at that time will separate the TPW traffic from the BNSF/TZPR traffic and make the TZPR traffic available for TZPR.

For westbound traffic, TPW will be delivering BNSF traffic to BNSF at the TZPR yard, as per your instructions, unless you have a different means for interchange with a free, unrestricted route.

TPW anticipates these changes will be effective on Friday, July 9, unless I hear differently from you.

David Rohal

Beach, Kim (GPRK)

From: Beach, Kim (GPRK)
Sent: Wednesday, July 14, 2010 2:13 PM
To: Beach, Kim (GPRK)
Subject: FW: STB Decision on BNSF/TPW direct interchange

From: Rohal, David (GPRK)
Sent: Wednesday, June 30, 2010 10:03 AM
To: Schmidt, R Mark (Shortline)
Cc: Putterman, Josh (GPRK); Crawford, Paul (TPW); Lanni, Tom (Home-Office)
Subject: RE: STB Decision on BNSF/TPW direct interchange

Mark – Still looking for BNSF designation of free interchange for TPW.

From: Rohal, David (GPRK)
Sent: Tuesday, June 22, 2010 9:28 AM
To: Schmidt, R Mark (Shortline)
Cc: Putterman, Josh (GPRK); Crawford, Paul (TPW)
Subject: RE: STB Decision on BNSF/TPW direct interchange

Mark –

I haven't heard from you since last Thursday, and I left you another voice message on this subject last evening.

BNSF must supply a free route for interchange to TPW, and TPW needs to know where BNSF wants their cars. Your operating guys did not return the calls of our GM, Paul Crawford, but Paul has an option for BNSF to consider.

TPW could interchange the BNSF traffic onto the BNSF "New Long Siding" which is less than 1,000' from Darst Street, the open interchange between TPW and BNSF. The traffic would subsequently be picked up on the next TPW train that hauls traffic out of the TZPR Peoria Yard and delivered as today with other cars in haulage service, to Galesburg so BNSF would not need to establish regular train service between Peoria and Galesburg. The cars would be interchanged by TPW to BNSF when made available on the New Long Siding.

I don't know if TZPR performs blocking that benefits BNSF so that BNSF would prefer to pay for the TZPR intermediate switching fees on traffic from TPW to BNSF, or prefer the direct interchange at Peoria as I just described. TPW does not intend to continue to pay intermediate switch charges on cars for BNSF.

Please let me know as soon as possible. We are prepared to change the operation immediately.

From: Rohal, David (GPRK)
Sent: Friday, June 18, 2010 9:11 AM
To: 'Schmidt, R Mark (Shortline)'
Cc: Putterman, Josh (GPRK)
Subject: FW: STB Decision on BNSF/TPW direct interchange

Mark –

As we discussed last night, the STB clarified that TPW has a direct interchange with BNSF, and therefore TPW needs to know where BNSF wants the interchange performed.

You indicated that BNSF desired for TPW to continue to deliver cars for BNSF to the TZPR so that they could be blocked for BNSF, rather than at the Darst St. interchange or other options. This suggests that TZPR charges affecting this interchange such as intermediate switching fees should be borne by BNSF, and TPW car hire responsibility ends when cars are delivered to TZPR.

Please confirm BNSF's desired location for TPW interchange to BNSF.

From: Rohal, David (GPRK)
Sent: Wednesday, June 09, 2010 8:31 AM
To: 'Schmidt, R Mark (Shortline)'
Cc: Putterman, Josh (GPRK)
Subject: RE: STB Decision on BNSF/TPW direct interchange

Mark –

Thank you for your call this morning confirming that you were collaborating with your service design, operating, and legal people on how to re-establish the direct interchange between BNSF and TPW. I hope, as you said, that you can develop BNSF preferences by the 16th so we can swiftly move to a more efficient operation for our mutual business.

I should have mentioned when you called, but we have notified Railinc to update the industry reference files to show Galesburg as a "normal" interchange, not just an "operating" interchange point between BNSF and TPW. Also, TPW GM Paul Crawford has reached out to your local operating folks as well as the TZPR to start coordinating a seamless transition.

From a TPW perspective, the most efficient interchange would be for us to deliver westbound cars for BNSF at Galesburg and pick up eastbound TPW and TZPR traffic at Galesburg. If BNSF cannot make a separate TPW block, the most efficient operation would be for TPW to perform switching for BNSF at Peoria to separate the TPW and TZPR traffic.

We hope that the efficiency of this direct interchange will promote an increase of business between BNSF and TPW.

From: Rohal, David (GPRK)
Sent: Tuesday, June 08, 2010 2:26 PM
To: 'Schmidt, R Mark (Shortline)'
Cc: Putterman, Josh (GPRK)
Subject: STB Decision on BNSF/TPW direct interchange

Mark –

The STB ruling this week on BNSF's filing of discontinuance of trackage rights clarified the rights of TPW and BNSF to interchange directly at Peoria and Galesburg if TPW wished to avoid the intermediate switching by TZPR.

Here's the text of the relevant paragraph of the STB decision:

Finally, if TP&W does not wish to continue using the intermediate switch, it appears to have alternative means of interchanging traffic with BNSF. P&PU granted TP&W overhead trackage rights that enable TP&W to interchange traffic directly with BNSF at a connection between BNSF's and P&PU's rail lines located near Darst Street, in Peoria.³ Additionally, TP&W has both trackage rights and haulage rights over another BNSF line between Galesburg

and Peoria.⁴ If the intermediate switch proves too costly or inefficient, TP&W could avail itself of these alternatives. Under these circumstances, we do not believe that regulation is necessary.

TPW does wish to reinstate direct interchange at Peoria and establish direct interchange with BNSF at Galesburg. Our operating guys will be contacting yours directly to make appropriate arrangements for changing the current pattern of interchange between TPW and BNSF. We would appreciate a swift decision on how BNSF will direct cars bound for TPW; e.g., whether BNSF would prefer to create a TPW block at Galesburg, have TPW perform an intermediate switch of the TZPR traffic for BNSF in Peoria, or continue to use TZPR as an intermediate switching carrier.

Beach, Kim (GPRK)

From: Beach, Kim (GPRK)
Sent: Wednesday, July 14, 2010 2:14 PM
To: Beach, Kim (GPRK)
Subject: FW: STB Decision on BNSF/TPW direct interchange

From: Crawford, Paul (TPW)
Sent: Tuesday, June 22, 2010 5:48 PM
To: Rohal, David (GPRK); Giles, John (GPRK); Lundberg, Paul (GPRK); Ovitt, Brad (RA Midwest); Louis E. Gitomer; Lanni, Tom (Home-Office); Liggett, Jeff (GPRK); Putterman, Josh (GPRK)
Subject: RE: STB Decision on BNSF/TPW direct interchange

Dave,
Per our conversation.

I just received a return phone call from Rick Danielson, BNSF Terminal Superintendent – Galesburg. He apologized for not getting back to me sooner. After general chat about some new people in our operations, I brought up the interchange issues.

He asked me to bring him up to speed from my perspective on what the issue(s) might be. I explained the contracts I had read and thought we had interchange rights with them and that our attorneys agreed. I explained how I would operate traffic to him westbound (take our cars, combine with TZPR and go to Galesburg). He didn't want us interchanging on the "new long" siding in Peoria because it would hinder him operationally.

I asked him about blocking the eastbound cars explaining that I figured he couldn't do that based on the small volume, to which he agreed. I then told him that we could do that for a nominal fee here and give them to the TZPR. He said we think alike.

We talked about the TZPR being a toll bridge and how I thought that we could save money and increase business between our railroads by cutting out that toll. I told him that it's only the BNSF and IAIS that we have to pay that intermediate switch fee.

He said he better understands now what's happening (an seemed very comfortable with it) and was going back to his people to discuss.

Paul

"Safety First is Safety Always"